



House of Representatives

General Assembly

File No. 288

January Session, 2003

House Bill No. 5092

House of Representatives, April 10, 2003

The Committee on Government Administration and Elections reported through REP. O'ROURKE of the 32nd Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT AUTHORIZING THE RECALL OF MUNICIPAL CHIEF ELECTED OFFICIALS HAVING A TERM OF OFFICE OF FOUR YEARS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2003*) (a) A chief elected official of
2 a municipality who is elected to a term of office of four years may be
3 recalled by the electors of the municipality for misfeasance,
4 malfeasance or nonfeasance in the performance of the duties of said
5 office, in accordance with the provisions of this section.

6 (b) The Secretary of the State shall prescribe the form of recall
7 petitions and such petitions shall be available from the town clerk of
8 any municipality whose chief elected official is elected to a term of
9 office of four years. The recall petition form shall include a space for
10 the name of the official whose recall is sought, a statement that the
11 purpose of the petition is to seek a referendum on the recall of said
12 official, a space for the grounds for such recall, a statement of

13 instructions to persons circulating the petition, lines for the signatures,
14 street addresses and dates of births of persons signing the petition,
15 spaces for the time and date on which the completed petition is filed
16 with the town clerk and spaces for the information required under
17 subsection (d) of this section concerning the circulation of the petition.

18 (c) A resident of any such municipality who is an elector may
19 initiate the recall of the chief elected official of the municipality by
20 filing an affidavit with the town clerk of the municipality stating the
21 name of said official and the grounds upon which the recall of such
22 official is sought and requesting recall petition forms. Upon such filing,
23 the town clerk shall issue recall petition forms to said resident. The
24 resident shall fill in the name of said official and the grounds for recall
25 on the recall petition forms. Any resident of the municipality who is an
26 elector may sign said petition.

27 (d) Each circulator of a recall petition page shall be a resident of said
28 municipality and an elector. Each separate page of such petition shall
29 contain a statement as to the authenticity of the signatures on the
30 petition and the number of such signatures, and shall be signed under
31 the penalties of false statement by the circulator of the petition page,
32 setting forth such circulator's address and attesting that each person
33 whose name appears on such sheet signed the same in person in the
34 presence of such circulator, that the circulator either knows each such
35 signer or that the signer satisfactorily identified the signer to the
36 circulator. Each separate sheet of such petition shall also be
37 acknowledged before an appropriate person as provided in section 1-
38 29 of the general statutes.

39 (e) Any person who signs a name other than the person's own to a
40 recall petition or who signs a name other than the person's own as
41 circulator of said petition shall be fined not more than one hundred
42 dollars or imprisoned not more than one year, or both.

43 (f) No petition for the recall of an official shall be effective unless
44 filed with the town clerk not later than four o'clock p.m. on the twenty-
45 eighth calendar day after the town clerk issues petition forms for such

46 recall under subsection (c) of this section. Upon the filing of a recall
47 petition, the town clerk shall sign and give to the person so submitting
48 a page or pages of such petition a receipt indicating the number of
49 such pages filed and the date and time when such pages were filed.
50 The town clerk shall forthwith transmit the petition to the registrars of
51 voters of the municipality who shall forthwith certify on each such
52 petition page the number of signers on the page who are electors in the
53 municipality. In the checking of signatures on recall petition pages, the
54 registrars shall reject any name if such name does not appear on the
55 last-completed active registry list in the municipality. The registrars
56 shall not reject any name for which the street address on the petition is
57 different from the street address on the registry list, if the person's date
58 of birth, as shown on the petition page, is the same as the date of birth
59 on the person's registration record. Each petition page shall contain a
60 statement signed by a registrar of voters of said municipality attesting
61 that the circulator is a resident of said municipality and an elector.
62 Unless such a statement by a registrar appears on each page so
63 submitted, the registrars shall reject such page. Any page of a petition
64 that does not contain a statement by the circulator as to the
65 authenticity of the signatures on the page, or upon which the
66 statement of the circulator is incomplete in any respect shall be rejected
67 by the registrars. The registrars shall also reject any page of a petition
68 they determine to have been circulated in violation of any other
69 provision of this section. The registrars shall complete their verification
70 of petition signatures and return the petition with their certifications to
71 the town clerk not later than seven calendar days after the petition is
72 filed with the town clerk.

73 (g) If, upon receiving a recall petition from the registrars of voters
74 under subsection (f) of this section, the town clerk determines that the
75 number of valid signatures on the petition is at least ten per cent of the
76 total number of electors whose names appear on the active registry list
77 of said municipality, (1) the town clerk shall forthwith certify the
78 petition and submit said certification to the legislative body of the
79 municipality, and (2) said legislative body shall, not later than seven
80 days after receipt of said certification, order a referendum to be held

81 on the recall of the chief elected official of the municipality not later
82 than thirty days after receipt of said certification.

83 (h) A recall referendum shall be conducted in accordance with the
84 provisions of chapter 152 of the general statutes and this section. The
85 form of the question to be used on the voting machine ballot labels and
86 absentee ballots at said referendum shall be "Shall (name of the
87 official and office) be recalled?". If, upon the official determination of
88 the results of such vote, a majority of all the votes cast are in approval
89 of the question, the chief elected official's office shall be vacant and
90 shall be filled in accordance with the applicable provision of state or
91 municipal law concerning the filling of vacancies in said office.

92 (i) The provisions of this section shall not apply to any municipality
93 for which state or municipal authority exists on the effective date of
94 this section for the recall of the chief elected official of the municipality.

This act shall take effect as follows:	
Section 1	July 1, 2003

GAE *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Type	FY 04 \$	FY 05 \$
Secretary of the State	GF - Cost	None	None

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 04 \$	FY 05 \$
Various Municipalities	Cost	See Below	See Below

Explanation

This bill allows a municipality’s voters to initiate a recall petition for their chief elected official for malfeasance. If the required number of valid petition signatures are collected the municipality must hold a referendum on the recall. The bill applies to municipalities with chief elected officials who serve four year terms.

There is no fiscal impact on the Secretary of the State to prescribe a recall petition form.

There are 11 municipalities where chief elected officials serve four year terms.¹ The cost to these municipalities to hold a referendum varies by town population. Small towns, such as Andover and Roxbury, can hold a referendum for approximately \$1,000. Large cities, such as Bridgeport and Stamford, can hold a referendum for approximately \$40,000 and \$90,000, respectively.

¹ Andover, Bridgeport, East Windsor, Hebron, Ledyard, Marlborough, Montville, Norwich, Roxbury, Stamford, and Westport.

OLR Bill Analysis

HB 5092

AN ACT AUTHORIZING THE RECALL OF MUNICIPAL CHIEF ELECTED OFFICIALS HAVING A TERM OF OFFICE OF FOUR YEARS**SUMMARY:**

This bill allows a municipality's voters to initiate a recall petition for their chief elected official for misfeasance, malfeasance, or nonfeasance (see BACKGROUND). The town must hold a referendum on the recall, if the required number of valid signatures is submitted. If a majority of the voters at the referendum approve the recall, the chief elected official's office is considered vacant and filled accordingly. The bill applies to chief elected officials who serve four-year terms, but not to towns that already authorize recall pursuant to a special act (see BACKGROUND).

EFFECTIVE DATE: July 1, 2003

PETITION SIGNATURES

The secretary of the state must prescribe a recall petition form (including information specified in the bill), which must be available from the town clerk offices where the chief elected official serves a four-year term. Anyone who is a town resident and registered voter can initiate a recall effort by filing an affidavit with the town clerk and requesting petition forms. Only registered voters in the town can circulate or sign the petition. They have 28 days to gather signatures from the time they get the petition forms from the town clerk.

The circulator must sign under penalty of false statement each petition page he submits and give his address. He must attest to its authenticity, that is, that he knows, or requested identification for, each signer and witnessed each signature. The penalty for falsely signing a petition as a signer or circulator is the same as penalties that exist under current law for nominating petition violations: up to a \$100 fine, up to one year in prison, or both.

PETITION VERIFICATION AND CERTIFICATION

The person submitting the signed petition pages to the town clerk gets a receipt from the clerk. The town clerk sends the pages to the registrars of voters, who have seven days to verify the signatures, certify the number on each petition page, and return them to the clerk. The registrars determine whether a signer is a registered voter in the town and reject the names of those who are not. (They cannot reject the name of a registered voter who has moved within the town, as long as the person's date of birth is the same.) The registrars must also attest that each page's circulator is a registered voter in the town. The circulator's statement must appear and be complete or the page is not counted. The registrars can reject any petition page that does not conform to the bill.

The town clerk determines whether the petition has an adequate number of verified signatures; that is, at least equal to 10% of the total number of registered voters in the town, based on the active voter registry list.

The clerk certifies the petition and submits the certification to the town's legislative body. The legislative body has seven days to order a recall referendum, which must be held within 30 days after it receives the certification.

RECALL REFERENDUM

The law on conducting a referendum applies to a recall referendum. The question that appears on the ballot is: "Shall (name of the official and office) be recalled?" If the majority of those voting approve the question, the office is considered vacant. The procedures for filling a vacancy for the chief elected official's office apply.

BACKGROUND

Grounds for Recall

The terms constituting the bill's grounds for recall are not defined in the bill but their meanings are discussed in case law. "Malfeasance in office" is the wrongful doing of an act that may affect or is connected to official duties, accompanied by some evil intent or motive or such gross negligence as to be the equivalent of fraud (*Raduszewski v. Superior Court In and For New Castle County, Del*, 232 A2d 95). It may

involve an act that the officer has no authority to do (*People v. Schneider*, 292 P2d 982).

“Misfeasance in office” includes performance of an official duty in an improper manner (*Matter of Lee*, 859 P2d 1244, 1247). “Nonfeasance in office” is the neglect or failure to perform duties of office that are required by law (*Maddox v. Williamson County Bd. Of Com’rs*, 475 NE2d 1349, 1355).

Municipalities Where Chief Elected Official Serves Four-Year Term

In the following 13 towns, the mayor or first selectman serves a four-year term. (In Hebron, where there is no office of first selectmen, all the members of the board of selectmen serve four-year terms.) The bill does not apply to Westport, since it already has a recall provision.

Andover	Ledyard	Stamford
Bridgeport	Marlborough	Sterling
East Windsor	Montville	Westport*
Hartford	Norwich	
Hebron	Roxbury	

*Allows recall under a special act provision in effect before enactment of the Home Rule Act.

Related Case

In *Simons v. Canty*, the state Supreme Court ruled that, because the General Assembly has not enacted legislation explicitly conferring the power to recall elected officials and the authority is not implied in other powers, towns cannot enact recall provisions by charter or ordinance (195 Conn. 524 (1985)). The only Connecticut towns that have authority to recall local officials are the five that were granted the authority by special act before the enactment of the constitution’s home rule provision. Those towns are Bristol, Milford, New Haven, Stratford, and Westport.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Report

Yea 10 Nay 5